

From: Brendan Casey [mailto:brendan@epicoutdoor.com]

Sent: Tuesday, May 08, 2012 1:44 PM

To: Mason Jordan; Laurenti Steve; Brown Gary; Wright Jerry; Doyle Charity; Nordstrom Ritchie; Davis Dave; Roberts John; Sasso Ron

Cc: Kooiker Sam; Kooiker Sam; Landeen Joel

Subject: Special Council Meeting; sign Ordinance

Council members,

Does everyone remember this stuff?

FRIDAY, APRIL 8, 2011

On Billboards...

I signed the petition to bring billboard limitations to a vote because I believe the people of Rapid City should decide. Whatever the outcome, I believe the Mayor and Council should follow the wishes of the majority expressed at the ballot box.

Personally speaking, I plan to vote YES on those measures, although I urge you to study the issue and draw your own conclusions. As you do, please keep the following points in mind:

- **In an information and technology-driven global economy, high-paying jobs can locate just about anywhere. If we want our fair share of those jobs to locate in Rapid City, we must make sure Rapid City is an attractive place to live.**
- **Tourism and conventions are our bread and butter. People do not come here to look at signs and clutter.**
- **The proposed new limitations apply only to billboards. They do NOT affect the on-premise signs of local businesses.**

We have cracked down on illegal signs, junk cars, dilapidated structures, litter, junk, and eyesores. **Call City Hall if you know of any examples we need to check out, 355-3485.**

A well-maintained infrastructure, excellent schools, a vibrant downtown, and a can-do, positive attitude at City Hall are additional ingredients for success.

Working together, we can make Rapid City competitive with any place in America. I sincerely believe that, and that's why I'm asking for your support—not only in the election but in moving Rapid City forward for years to come.

Thank you!



**HANKS
FOR MAYOR**

Paid for by Hanks for Mayor
1725 Hanks Drive, Rapid City, SD 57501
www.ofanhanks.com



Let's clean it up.

On June 7, Rapid City voters will have a chance to approve two ballot measures that limit the number, size, and electronic distraction of billboards within city limits.

(Click on photos to make them larger)

I thought you might.

Over the last decade, Councilman then Mayor Hanks took every opportunity he could to expand the City of Rapid's outdoor advertising company (Civic Center signage, LED in Memorial park, Rapid Transit advertising, etc) and curtail and villanize private sector attempts to do the same. Over the last decade, we have had no less than 5 major re-writes of the code, each being more regressive and illegal than the next. Each of the Alan Hanks appointed committees were comprised of those who despise signs, and usually a single industry representative who usually got out voted 10 to 1. These recommendations were then brought forward as a "reasonably negotiated and by the people" ordinance to be considered by the Council. Now the sign code has blossomed to over 28 pages, and you are contemplating adding another 3-4 pages to it on Monday night. Keep in mind, *the AOB (or strip club) ordinance is only 14 pages*. The industry has abided by each and every version of these punitive codes, regardless of its illegality and despite what the Petersen's and Lisa Modrick's of RC would have you believe. In the last 8 years under a myriad of different codes, there has been 30 billboard locations removed and ZERO replaced. Why are we layering on more ordinance? Oh yes . . . the "people have spoken" and we have 2 ininitiated measures to contend with now. Here is where it really gets tricky .

Facing heavy competition in the mayoral race, Alan Hanks aligned with Lisa Modrick and the newly formed Scenic Rapid City to concoct a municipal issue out of billboards, to divert attention from Hanks' record and add a little "visual clutter" to the June 7th ballot. Despite the legal analysis given to Hanks and then City Attorney Jason Green by the industry, the initiated measures were hastily placed on the ballot and the legal ramifications were ignored (see attached). Those of you who went to Pierre in opposition to SB157 should now be well aware of the legal issues surrounding the initiated measures. 70% of the SD State Legislature agreed with the industry's analysis. Both of these initiated measures violate state and federal law, Alan Hanks and Jason Green are long gone, and now the council and the industry (along with a few attorneys and a couple of Judges) have to straighten this mess out.

I have sent dozens of correspondences to the present and past councils regarding overriding state and federal law, so more discussion or analysis from me is unnecessary. The councils inability to separate legitimate business concerns from the desires of the 8th Street Bunch has resulted in litigation that I am certain will not be in the best interest of the taxpayers or the business community. Lamar has filed a claim in federal court (see attached) and it is likely other sign companies will do the same in state court.

In regards to the sign matter you will be undertaking during the special council meeting, I have no input. Pass it or don't. It will not change the fact that the City of RC has had a defacto ban in place for the last 8 years by and through your 28 page (and growing) ordinance, in obvious violation of state law. Further additions and tightening of this municipal ordinance only solidifies what the industry has contended for years.

I continually hear the Modrick/Petersen/Jensen group talking about how "the people have spoken" and the "public vote". Epic Outdoor Advertising is running at full capacity, with signs being rented by the willing and with our prices rising. Isn't this a "public vote" as well?

Please think about the local businesses and their employees who prefer to utilize this type of advertising . . they vote in municipal elections too, you know.

Thank you for your time,

Brendan Casey
Epic Outdoor Advertising

April 1, 2011

City of Rapid City
Office of the City Attorney
Attn: Jason Green
300 Sixth Street
Rapid City, SD 57701

RE: Petitions to Amend the Rapid City Municipal Code

Dear Mr. Green:

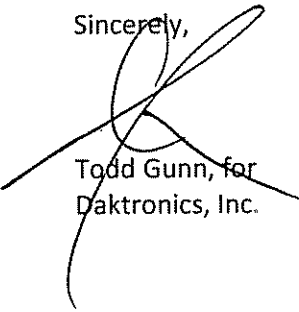
My name is Todd Gunn and I am General Counsel for Daktronics, Inc. As you may know, Daktronics, Inc. ("Daktronics") is an LED-display manufacturing company headquartered in Brookings, South Dakota. Established in 1968 and employing over two thousand people in the state, Daktronics is one of a handful of publicly-traded companies with corporate offices in South Dakota. Daktronics is proud of its long history in South Dakota and its commitment to our community and state.

I am advised that there are currently multiple petitions being circulated in Rapid City to place certain ballot initiatives restricting outdoor advertising in Rapid City before a public vote. I understand that your office has had dialogues with Epic Outdoor Advertising and Lamar regarding the substantial legal implications that these proposed measures present. I am writing today to advise you that I share Epic and Lamar's concerns that these measure violate likely First Amendment protections, are in direct contravention to South Dakota state law, and would constitute a de facto, impermissible ban on outdoor advertising and a potential taking by the government.

If these measures go forward, Daktronics will support efforts to challenge these laws in court. While Daktronics does not favor litigation to settle disputes, in this instance there will be no other option than a lengthy and costly legal fight that will only waste taxpayer money on a quixotic crusade to defend a law that is likely unconstitutional and barred by existing South Dakota statutes.

I trust that the City will take all appropriate measures to comply with the First Amendment and applicable South Dakota law and not permit these measures to go forward.

Sincerely,



Todd Gunn, for
Daktronics, Inc.

The Law Offices of

C L CLAYBORNE, LOOS
& S AND SABERS LLP

Courtney R. Clayborne
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Rapid City, South Dakota 57709-9129

March 30, 2011

VIA FACSIMILE AND U.S. MAIL

Mr. Jason Green
City Attorney
300 6th Street
Rapid City, SD 57701

Re: Epic Outdoor Advertising

Dear Jason,

I hope this letter finds you doing well.

Thanks for talking to me a few weeks back about my involvement in representing Epic Outdoor Advertising. I am writing to confirm that I am going to represent Epic Outdoor Advertising in relation to the petition to ban electronic billboards ("Billboard Control Petition") and to destroy the bargained for value of sign credits ("Sign Credit Petition").

My clients, and many other interested parties, have followed and documented the process regarding these petitions very carefully. At this point, I understand that your office is overseeing the count and facial validity of these two petitions. I also understand your office is going to be in the position to give the City of Rapid City legal guidance on the legal implications of the petitions. I wanted to write to express my thoughts and concerns prior to that occurring.

I expect you may be in a similar position to me in that you did not see the petitions at any point prior to their completion. I also know from dealing with you over a great number of years that you fully understand the law on the legal issues that are present. Now that the petitions have been submitted, and a review of the petitions can be done in light of settled South Dakota law, it does not take much in the way of legal analysis to know that the City of Rapid City is exposing itself to litigation and substantial liability exposure if it allows these petitions to proceed to a vote and ultimately become an amendment to municipal ordinance.

The two petitions violate South Dakota and Federal law. If the amendments somehow become municipal ordinance, they also constitute a regulatory taking which will be the subject of substantial compensation.

I noted in the Rapid City Journal that after the drafters of the petitions began circulating the same that they realized that the ban on electronic billboards violated SDCL 31-29-69 and likely other South Dakota statutes. The back peddle that ensued, culminating in a Rapid City Journal article where the drafters made the Journal use asterisks around the word ***not*** in relation to "ban," clearly identified that acknowledgement. As the old adage goes, if it quacks like a duck, looks like a duck, and walks like a duck, it is a "ban." Asterisks in the paper do not change the fact that the Billboard Control Petition bans electronic billboards.

The Constitutional implications of the petitions are also rather significant. As written, the ban is not narrowly tailored. Further, the petition fails to address the fact that electronic boards currently exist and as such no substantial interest can be identified to justify or distinguish the need for a future ban. Last, the ban places the cart in front of the horse in the fact that the drafters and supporters have been quoted repeatedly stating a ban needs to be put in place so that the electronic boards can be studied. As I know you are aware, banning electronic boards first, then "studying" them later, is a rationale that will not satisfy any level of legal scrutiny let alone the heightened intermediate scrutiny that will be applied in this instance. In sum, I believe the petitioners placed the City of Rapid City in a precarious situation which will subject it to substantial liability.

The other issues provided for in the Billboard Control Petition are equally troubling. The amendment proposed to increase the required distance between off premise signs, and the manner in which such distance is measured, would ban any future site. My client would challenge anyone under the terms of the amendment to find a single suitable site to erect a new billboard. Draconian restrictions that result in impossibilities are synonymous with an outright ban.

The Sign Credit Petition also violates South Dakota law including but not limited to SDCL 31-29-75. The regulatory taking that will occur if such amendment were to pass would, under the cited statute, would "guarantee just compensation" to my client as well as other entities. Put simply, when sign credits have become bargained for commercial currency any action to devalue, or in this case destroy, the value of that commercial currency is a regulatory taking subject to compensation. The petitioners have, again, placed the City of Rapid City in a precarious position.

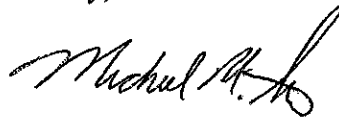
I have always viewed the City Attorney as having a very valuable gate keeping function when issues like this arise. The gate keeping function prevents any group of petitioners, as here, from drafting petitions with a clearly impermissible purpose and subsequently subjecting the City of Rapid City to substantial liability. My client is deeply concerned that without the legal implications of these petitions being known, that the City Council will simply rubber stamp the petitions and they will subsequently be placed on the ballot.

Your office can advise against that, and I submit that such action is warranted in this instance.

If the City Council were to rubber stamp the petitions, over your legal opinion or otherwise, the documented "explanation" the petitioners provided to those who signed the petitions cannot be the explanation provided for on the ballot. Such explanation must be honest and straightforward. The explanation must use the word ban, and explain that South Dakota state law prevents such a ban. Further, the explanation must explain to the voters that these amendments will subject the City of Rapid City to liability, and also that such liability will be substantial. Again, the gate keeping function that your office maintains can prevent this from happening, but if it does happen, the voters should at a minimum understand the legal implications of the amendments.

If you want to discuss this further, I would gladly talk to you about any or all of these issues. Thanks again for considering the content and position in this letter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Michael K. Sabers".

Michael K. Sabers

MKS/jmh
C: clients



Larkin Hoffman Daly & Lindgren Ltd.

1500 Wells Fargo Plaza
7900 Xerxes Avenue South
Minneapolis, Minnesota 55431-1194

GENERAL: 952-835-3800
FAX: 952-896-3333
WEB: www.larkinhoffman.com

March 23, 2011

Connor B. Eglin
Associate General Counsel
Lamar Advertising Company
5551 Corporate Blvd.
Baton Rouge, LA 70808

Re: Petitions to Amend Rapid City Sign Code

Dear Mr. Eglin:

We have reviewed the Citizen's Billboard Control Municipal Initiative Petition (the "Billboard Control Petition") and the Citizen's Reform Initiative for Billboard Sign Credits Municipal Initiative Petition (the "Sign Credits Petition") proposed in Rapid City, SD (the "City"), as well as relevant Federal and South Dakota law, including the South Dakota Highway Beautification Act (the "Act"). We believe the Petitions do not comply with either Federal law or South Dakota law. Our preliminary analysis shows there are several arguments available to challenge the Petitions.

The Ban on Off-Premise Signs Violates the Act and the First Amendment

The Billboard Control Petition proposes an amendment to the Rapid City Municipal Code (the "Code") which would prohibit all off-premise signs with internal illumination or which display electronic variable messages. That proposed prohibition violates the provisions of SDCL §31-29-69 which broadly prohibit a municipality from banning outdoor advertising within its incorporated limits.

Most importantly, the proposed ban violates the First Amendment to the Constitution of the United States. The First Amendment provides that "Congress shall make no law ... abridging the freedom of speech." U.S. Const. amend. 1. The "free speech" clause applies to the states through the Fourteenth Amendment. *Liquormart, Inc. v. Rhode Island*, 517 U.S. 484, 489 n. 1 (1996). Provisions of law that regulate a medium of communication, such as the posting of signs, often affects speech and are subject to First Amendment scrutiny. See, e.g., *City of Ladue v. Gilleo*, 512 U.S. 43, 48, (1994) (stating "because regulation of a medium inevitably affects communication itself, it is not surprising that we have had occasion to review the constitutionality of municipal ordinances prohibiting the display of certain outdoor signs").

If a provision seeks to limit when, where, or how means of expression may be used, it is analyzed to determine if it is a valid "time, place, and manner" regulation. *Hill v. Colorado*, 530 U.S. 703, 725-26 (2000). A provision of law that regulates the time, place, or manner of

protected speech must be narrowly tailored to serve the government's substantial and content-neutral interests while leaving open ample alternative channels, but the regulation need not be the least restrictive or least intrusive means of doing so. *Ward v. Rock Against Racism*, 491 U.S. 781, 797-803(1989); see *Hill*, 530 U.S. at 725.

The proposed ban is not narrowly tailored. The ban applies to all off-premise signs with internal illumination or which display electronic variable messages but does not apply to on-premise signs or other off-premise signs. The ban leaves no alternative channels for this type of advertising. Moreover, the proposed ban serves no substantial interest as it does not affect existing signs.

In addition, by imposing the ban on off-premise signs, but not on-premise signs, the citizens' proposed Code amendments would favor noncommercial over commercial speech, a content based regulation in violation of the First Amendment. *Clear Channel Outdoor, Inc. v. City of St. Paul*, 2003 WL 21857830 (D.Minn.). (See also *Metromedia*). The United States Supreme Court has held that a sign ordinance is invalid if the ordinance imposes greater restrictions on noncommercial signs than on commercial signs. *Metromedia, Inc. v. City of San Diego*, 453 U.S. 490, 513 (1981). Regulations on commercial speech are subject to intermediate scrutiny under the framework set forth in *Central Hudson Gas & Electric Corp. v. Public Service Commission of New York*, 447 U.S. 557 (1980); *Florida Bar v. Went For It, Inc.*, 515 U.S. 618, 623 (1995). To determine whether the regulation on commercial speech is constitutionally valid courts must determine whether: (1) the affected speech concerns lawful activity and is not misleading, therefore protected by the First Amendment; (2) the government's asserted interest in regulating the speech is substantial; (3) the regulation directly advances the asserted interest; and (4) the regulation restricts no more speech than necessary to serve the asserted interest. *Central Hudson*, 447 U.S. at 566. The state "bears the burden of identifying a substantial interest and justifying the challenged restriction." *Greater New Orleans Broad. Assoc., Inc. v. United States*, 527 U.S. 173, 183 (1999).

The proposed ban does not meet this four factor test. The Supreme Court, while recognizing that traffic safety and aesthetics are substantial public interests, has determined they are not sufficiently compelling interests able to withstand scrutiny under a constitutional claim. *Metromedia* at 507-08. The proposed ban does not directly and materially advance the City's interest in traffic safety and aesthetics, in part because of the large number of existing off-premise and on-premise commercial signs that will be allowed to remain. *City of Cincinnati v. Discovery Network, Inc.*, 507 U.S. 410 (1993). The ban imposes a significant cost on both sign companies and landowners through lost revenue, and "speech cannot be financially burdened, any more than it can be punished or banned" by reference to content. *Forsyth County, Ga. v. Nationalist Movement*, 505 U.S. 123, 134-35 (1992). Finally, the proposed ban restricts more speech than necessary to serve its interests. The ban applies to all off-premise signs, but leaves on-premise signs unaffected.

The Increase in Off-Premise Sign Spacing Violates State and Federal Law

The Billboard Control Petition also proposes to amend the Code to increase the required distance between off-premise signs to 1,500 feet (measured radial) and to 2,000 feet (measured linear). Apparently, there are few, if any, viable locations for billboards in Rapid City under the current Code distance requirements. Increasing the distance requirement would only compound that situation, effectively resulting in a ban on all types of new outdoor off-premise signage in clear violation of the First Amendment and the Act, under the analysis discussed above.

The Sign Credit Petition Amendments Constitute a Taking Compensable under State and Federal Law

The Sign Credit Petition amends the Code to cap at 20 the number of outstanding off-premise sign credits. Consequently, no additional off-premise sign credits may be issued if, at any time, there are more than 20 off-premise sign credits outstanding. The Sign Credit Petition also places a time limit of twenty (20) years on the life of existing and future sign credits granted under the Code.

The proposed 20-year sign credit limitation clearly violates the provisions of SDCL §31-29-75, which prohibits the removal of advertising signs, displays or devices by an amortization schedule and guarantees just compensation for such removal. The proposed amendments to the Code in the Sign Credit Petition also do not meet the standards imposed under the Fifth and Fourteenth Amendments of the United States Constitution and constitute compensable regulatory takings in violation of the Supreme Court's decision in *Penn Central Transportation Co. v. New York City*, 438 U.S. 104 (1978). The Supreme Court, in *Penn Central*, articulated a three-factor regulatory takings test. Under this test, a court must evaluate a regulatory takings claim based on (1) the economic impact of the regulation, (2) the owner's reasonable investment-backed expectations, and (3) the character of the regulatory action.

The economic impact of the Sign Credit Petition amendments is significant. Lamar and other sign companies in the City have removed signs in exchange for sign credits under the current sign credit ordinance with the expectation that those credits would be in existence for longer than 20 years. As such, the credits reflect valuable interests in property. The proposed Code amendments retroactively apply to existing credits which were obtained in reliance on the City's sign credit ordinance. The value of those credits would be materially diminished by the proposed amendments initially and would be completely extinguished at the end of the 20-year amortization period. Consequently, the proposed 20-year phase out would constitute a regulatory taking requiring compensation from the City under the Fifth and Fourteenth Amendments and under the Act.

For the reasons stated above, we are of the opinion a South Dakota reviewing court would invalidate both the Billboard Control Petition amendments and the Sign Credits Petition amendments, if enacted by the City. Failing that, Lamar and other similarly affected sign

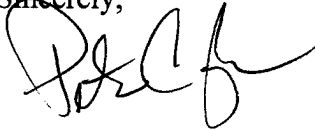
Connor B. Eglin, Esq.

March 23, 2011

Page 4

companies would have a substantial claim for damages arising from the taking of valuable property interests without just compensation as provided under Federal and State law. Please contact us to discuss these matters at your earliest convenience.

Sincerely,



Peter J. Coyle, for
Larkin Hoffman Daly & Lindgren Ltd.

Direct Dial: (952) 896-3214
Direct Fax: (952) 842-1704
Email: pcoyle@larkinhoffman.com

FILED

AUG 29 2011


CLERK

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA

Lamar Advertising of South
Dakota, Inc., a South Dakota
corporation, and TLC Properties,
Inc., d/b/a Lamar TLC Properties,
Inc., a Louisiana corporation,

File No. 11-5068

COMPLAINT

Plaintiffs,

v.

City of Rapid City, a South Dakota
municipal corporation,

Defendant.

For their complaint, plaintiffs Lamar Advertising of South Dakota, Inc. and TLC Properties, Inc., d/b/a Lamar TLC Properties, Inc., state and allege as follows:

THE PARTIES

1. Plaintiff Lamar Advertising of South Dakota, Inc. ("Lamar") is a South Dakota corporation with its principal place of business at 5321 Corporate Boulevard, Baton Rouge, Louisiana 70896 and a registered office at 300 South Phillips Avenue, Suite 300, Sioux Falls, South Dakota 57104.

2. Plaintiff TLC Properties, Inc., d/b/a Lamar TLC Properties, Inc., ("TLC") is a Louisiana corporation with its principal place of business at 5321 Corporate Boulevard, Baton Rouge, Louisiana 70896 and a registered office at 300 South Phillips Avenue, Suite 300, Sioux Falls, South Dakota 57104.

3. Defendant City of Rapid City (the “City”) is a South Dakota municipal corporation existing under the laws of the State of South Dakota and located at 300 Sixth Street, Rapid City, South Dakota 57701.

JURISDICTION AND VENUE

4. This Court has jurisdiction under 28 U.S.C. § 1331 because this action arises under the United States Constitution, as fully set forth herein.

5. This Court has supplemental jurisdiction under 28 U.S.C. § 1367(a) for Lamar’s state law claims.

6. Venue properly lies in this Court pursuant to 28 U.S.C. § 1391.

FACTUAL BACKGROUND

7. Lamar is in the business of outdoor advertising. In the City, Lamar owns and maintains 118 outdoor advertising signs pursuant to and in compliance with the Rapid City Municipal Code (the “Code”).

8. Lamar leases the real property on which its outdoor advertising signs are located.

9. TLC has an ownership interest in several parcels of real property which Lamar leases for its outdoor advertising signs.

10. All of Lamar’s signs are classified as “off-premises signs” which are defined by Section 15.28.010 of the Code as: “[a]ny sign identifying or advertising a business, person, activity, goods, products or services located off the premises from where the business, person/activity, goods, products, or services are located.”

11. None of Lamar's signs are classified as "on-premises signs" which are defined by Section 15.28.010 of the Code as: "[a]ny sign identifying or advertising a business, person, activity, goods, products or services which are located on the premises where the sign is installed and maintained."

12. Under Section 15.28.250 of the Code, the City is authorized to issue "off-premises sign credits" to "owners of off-premises signs who have completely removed a previously existing, lawfully erected off-premise sign and all associated structures" after the 2002 effective date of the provision.

13. Section 15.28.250 of the Code also provides that off-premises sign credits are issued if an owner replaces a sign face larger than two hundred fifty (250) square feet for a sign face not larger than two hundred fifty (250) square feet.

14. Since October 2002, Lamar has received ninety-eight (98) sign credits from the City for the removal of forty-five (45) lawfully erected off-premises signs and the replacement of the faces of four (4) lawfully erected signs with sign faces under two hundred fifty (250) square feet.

15. Lamar surrendered its property rights in these lawfully erected signs with the expectation that the off-premises sign credits could be used to erect new signs or convert existing signs to digital signs, as provided by the Code.

16. Pursuant to Section 15.28.250(E) of the Code, "[o]ff premise sign credits may only be used to erect a new off-premises sign if the proposed new sign is in full

compliance with all requirements of the Rapid City Municipal Code and all applicable federal, state or local laws and regulations.”

17. Previously, Lamar used four (4) of its off-premises sign credits to construct two (2) new digital signs in the City and intended to use additional sign credits for this purpose.

18. In April 2011, Lamar attempted to use its off-premises sign credits to convert six (6) of its signs to digital signs but the City denied all six (6) applications.

19. In addition, Lamar intended to use its off-premises sign credits to convert ten (10) additional signs to digital signs, all of which are located on parcels of real property in which TLC has an ownership interest.

20. Further, Lamar intended to use its off-premises sign credits to erect new signs within the City.

21. On or about June 7, 2011, a City election was held and The Citizens’ Billboard Control Initiative was passed by the electorate. The Citizens’ Billboard Control Initiative amended the Code to prohibit all off-premises signs with internal illumination or which display electronic variable messages.

22. Section 15.28.050 of the Code was amended by adding the following new subdivision:

R. Off-premises signs with internal illumination or displaying electronic variable messages are prohibited. Any new off-premises sign is prohibited if it is internally illuminated or operates to display electronic variable messages through light emitting diodes or any other light emitting mechanism. An existing off-premises sign may not be converted to a sign that

is internally illuminated or operates to display electronic variable messages through light emitting diodes, liquid crystal display, plasma image display, or any other light emitting mechanism.

23. Section 15.28.160 of the Code was amended by adding the following new subdivision:

P. No off-premises sign is permitted that is internally illuminated or operates to display electronic variable messages through light emitting diodes, liquid crystal display, plasma image display, or any other light emitting mechanism.

24. In addition, The Citizens' Billboard Control Initiative amended the Code to increase the distance between outdoor advertising signs. Section 15.28.160(D) of the Code was amended by changing the following language:

D. Off-premise signs shall be located not nearer than ~~500~~ 1,500 feet from any other off-premise sign. The distance between off-premise signs shall be measured from the base of the sign in all directions (radial feet). In addition, no off-premises sign shall be located nearer than ~~1,000~~ 2,000 feet from the nearest off premises signs as measured by the distance over a public road between a line that extends from the base of each sign to the nearest mid-point of any public road from which the sign is intended to be viewed.

25. At the June 7, 2011 City election, The Citizens' Reform Initiative for Billboard Sign Credits was also passed by the electorate. The Citizens' Reform Initiative for Billboard Sign Credits amended the Code by prohibiting any additional off-premises sign credits from being issued if, at any time, there are more than twenty (20) off-premises sign credits outstanding, thereby establishing a cap on the number of off-premises sign credits held by Lamar.

26. Section 15.28.250 of the Code was amended by adding the following new provision to subdivision B:

An off-premises sign credit may not be issued if there are more than twenty sign credits outstanding.

27. In addition, The Citizens' Reform Initiative for Billboard Sign Credits amended the Code to place a time limit of twenty (20) years on the life of existing and future sign credits granted under the Code.

28. Section 15.28.250 of the Code was amended by adding the following new provision:

F. Sunset Date for Sign Credit. An off-premises sign credit shall not exist in perpetuity. An off-premises sign credit shall terminate two decades after it has been issued unless utilized within twenty years from the date of issuance by the Building Official or unless the same has become void by operation of the provisions of this Section 15.28.250.

29. The Fifth Amendment to the United States Constitution provides that private property shall not "be taken for public use, without just compensation." The Fifth Amendment applies to the states through the Fourteenth Amendment to the United States Constitution.

30. Article VI § 13 of the South Dakota Constitution also provides that "[p]rivate property shall not be taken for public use, or damaged, without just compensation..."

31. Lamar removed lawfully erected signs in exchange for sign credits under the previous sign credit ordinance with the expectation that Lamar would be able to use

those credits in the future to convert existing signs to digital signs and to construct new signs and with the expectation that those credits would be in existence for longer than twenty years. As such, Lamar's off-premises sign credits reflect valuable interests in property.

32. Section 15.28.050(R) and 15.28.160(P) of the Code's ban on all off-premises signs with internal illumination or which display electronic variable messages makes it impossible for Lamar to use any of its off-premises sign credits to convert existing signs to digital signs and to construct new digital signs which constitutes a regulatory taking requiring compensation from the City under the Fifth and Fourteenth Amendments of the United States Constitution and Article VI § 13 of the South Dakota Constitution.

33. The increased distance between off-premises signs imposed by Section 15.28.160(D) of the Code makes it impossible for Lamar to use any of its off-premises sign credits to construct any new off-premises signs in the City and constitutes a regulatory taking requiring compensation from the City under the Fifth and Fourteenth Amendments of the United States Constitution and Article VI § 13 of the South Dakota Constitution.

34. The inability of TLC to use the real property in which it has an ownership interest for signs with internal illumination or which display electronic variable messages decreases the value of TLC's real property interest and constitutes a regulatory taking

requiring compensation from the City under the Fifth and Fourteenth Amendments of the United States Constitution and Article VI § 13 of the South Dakota Constitution.

35. In addition, Section 15.28.250(B)(6) of the Code may be retroactively applied to Lamar's existing credits which were obtained in reliance on the City's sign credit ordinance, decreasing Lamar's credits from the existing ninety-four (94) credits to twenty (20) credits. Consequently, the twenty-credit-cap on sign credits may constitute a regulatory taking requiring compensation from the City under the Fifth and Fourteenth Amendments of the United States Constitution and Article VI § 13 of the South Dakota Constitution.

36. Further, the value of the sign credits are materially diminished by 15.28.250(F) of the Code because Lamar's property rights in such credits are completely extinguished at the end of the twenty-year amortization period. Consequently, the twenty-year phase out constitutes a regulatory taking requiring compensation from the City under the Fifth and Fourteenth Amendments of the United States Constitution and Article VI § 13 of the South Dakota Constitution.

37. SDCL § 31-29-75 specifically prohibits a municipality from removing advertising signs by an amortization schedule and guarantees just compensation for such removal:

No outdoor advertising sign, display, or device may be removed by an amortization schedule, nor may its value be so determined, and the owners thereof and the owners of the real property on which the same are situated shall be guaranteed just compensation, including through condemnation

procedures, as provided in § § 31-29-61 to 31-29-83, inclusive.

38. The twenty-year sign credit limitation in Section 15.28.250(F) of the Code removes outdoor advertising by an amortization schedule and does not provide the required just compensation.

39. SDCL § 31-29-69 specifically prohibits a municipality from banning outdoor advertising within its incorporated limits:

Nothing in § § 31-29-61 to 31-29-83, inclusive, authorizes any local authority to prohibit outdoor advertising throughout its jurisdiction. However, any such regulation and control shall be reasonable and reasonably related to the needs of the business community to adequately and properly advertise its goods and services of benefit to the traveling public.

40. The ban on all off-premises signs with internal illumination or which display electronic variable messages in Sections 15.28.050(R) and 15.28.160(P) of the Code effectively prohibits outdoor advertising in the City and is not reasonably related to the needs of the business community to adequately and properly advertise its goods and services of benefit to the traveling public.

41. In addition, the tripling of the required distance between off-premises signs from 500 to 1,500 feet (measured radial) and the doubling of the distance as measured over a public road from 1,000 to 2,000 feet (measured linear) in Section 15.28.160(D) of the Code effectively creates a ban on all types of new outdoor off-premises advertising and is not reasonably related to the needs of the business community to adequately and properly advertise its goods and services of benefit to the traveling public.

42. The Fourteenth Amendment to the United States Constitution provides that “no state shall...deny to any person within its jurisdiction the equal protection of the laws.”

43. Article VI § 18 of the South Dakota Constitution similarly provides that “[n]o law shall be passed granting to any citizen, class of citizens or corporation, privileges or immunities which upon the same terms shall not equally belong to all citizens or corporations.”

44. Imposing the requirements in Section 15.28.050(R), 15.28.160(P), and 15.28.160(D) of the Code to off-premises signs, but not on-premises signs, deprives persons with off-premises signs equal protection under the law in violation of the Fourteenth Amendment to the United States Constitution and Article VI § 18 of the South Dakota Constitution.

45. The First Amendment to the United States Constitution provides that “Congress shall make no law ... abridging the freedom of speech...” The First Amendment applies to the states through the Fourteenth Amendment to the United States Constitution.

46. Article VI § 5 of the South Dakota Constitution also provides a right to free speech.

47. The ban on all off-premises signs with internal illumination or which display electronic variable messages in Sections 15.28.050(R) and 15.28.160(P) of the Code and the increase in distance between signs to ban all types of new outdoor off-

premises advertising in Section 15.28.160(D) of the Code are not narrowly tailored and leave no alternative channels for this type of advertising in violation of the First and Fourteenth Amendment to the United States Constitution and Article VI § 5 of the South Dakota Constitution.

COUNT I

DECLARATORY JUDGMENT VIOLATION OF THE FIFTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION

48. Lamar and TLC incorporate the preceding paragraphs by reference as though set forth in full.

49. This cause of action is brought pursuant to SDCL § 21-24-1, et seq., for a judicial declaration by this Court.

50. The Fifth Amendment to the United States Constitution provides that private property shall not “be taken for public use, without just compensation.” The Fifth Amendment applies to the states through the Fourteenth Amendment to the United States Constitution.

51. Lamar removed lawfully erected signs in exchange for sign credits under the previous sign credit ordinance with the expectation that Lamar would be able to use those credits in the future to convert existing signs to digital signs and to construct new signs and with the expectation that those credits would be in existence for longer than twenty years. As such, Lamar’s off-premises sign credits reflect valuable interests in property.

52. TLC has an ownership interest in several parcels of real property which Lamar leases for its outdoor advertising signs.

53. Sections 15.28.050(R) and 15.28.160(P) of the Code's ban on all off-premises signs with internal illumination or which display electronic variable messages makes it impossible for Lamar to use any of its off-premises sign credits to convert existing signs to digital signs and to construct new digital signs. Sections 15.28.050(R) and 15.28.160(P) of the Code constitutes an impermissible regulatory taking without compensation in violation of the Fifth and Fourteenth Amendments of the United States Constitution.

54. The increased distance between off-premises signs imposed by Section 15.28.160(D) of the Code makes it impossible for Lamar to use any of its off-premises sign credits to construct any new sign in the City. Section 15.28.160(D) of the Code constitutes an impermissible regulatory taking without compensation in violation of the Fifth and Fourteenth Amendments of the United States Constitution.

55. The inability of TLC to use the real property in which it has an ownership interest for signs with internal illumination or which display electronic variable messages decreases the value of TLC's real property interest. Sections 15.28.050(R) and 15.28.160(P) of the Code constitute an impermissible regulatory taking without compensation in violation of the Fifth and Fourteenth Amendments of the United States Constitution.

56. Section 15.28.250(B)(6) of the Code may be retroactively applied to Lamar's existing credits which were obtained in reliance on the City's sign credit ordinance, decreasing Lamar's credits from the existing ninety-four (94) credits to twenty (20) credits. Section 15.28.250(B)(6) of the Code constitutes an impermissible regulatory taking without compensation in violation of the Fifth and Fourteenth Amendments of the United States Constitution.

57. The value of Lamar's sign credits are materially diminished by 15.28.250(F) of the Code because Lamar's property rights are completely extinguished at the end of the twenty-year amortization period. Section 15.28.250(F) of the Code constitutes an impermissible regulatory taking without compensation in violation of the Fifth and Fourteenth Amendments of the United States Constitution.

58. Such taking is in violation of the Constitution of the United States and constitutes in the alternative either a categorical taking under *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 112 S.Ct. 2886 (1992), or a taking based upon the economic impact of the regulation and its interference with the reasonable investment backed expectations of Lamar pursuant to *Penn. Cent. Transp. Co. v. City of New York*, 438 U.S. 104, 98 S.Ct. 2646 (1978).

59. Sections 15.28.050(R), 15.28.160(P), 15.28.160(D), 15.28.250(B)(6) and 15.28.250(F) of the Code do not constitute a legitimate exercise of police power.

60. Lamar and TLC seek a declaratory judgment that Sections 15.28.050(R), 15.28.160(P), 15.28.160(D), 15.28.250(B)(6) and 15.28.250(F) of the Code are illegal

and constitute an impermissible regulatory taking in violation of the Fifth and Fourteenth Amendments to the United States Constitution.

61. Lamar and TLC seek an order and judgment of this Court mandating that Sections 15.28.050(R), 15.28.160(P), 15.28.160(D), 15.28.250(B)(6) and 15.28.250(F) of the Code are in violation of the Fifth and Fourteenth Amendments to the United States Constitution and ordering the City to cease and desist from any and all enforcement of Sections 15.28.050(R), 15.28.160(P), 15.28.160(D), 15.28.250(B)(6) and 15.28.250(F) of the Code.

62. In the alternative, if the application of Sections 15.28.050(R), 15.28.160(P), 15.28.160(D), 15.28.250(B)(6) and 15.28.250(F) of the Code are held to constitute a valid exercise of police power, the City must compensate Lamar and TLC for the loss that will be suffered by Lamar and TLC for the regulatory taking in an amount in excess of Seventy Five Thousand Dollars (\$75,000.00), the precise amount to be determined at trial, as well as interest, costs, disbursements, and attorneys' fees.

COUNT II

VIOLATION OF 42 U.S.C. § 1983

63. Lamar and TLC incorporate the preceding paragraphs by reference as though set forth in full.

64. 42 U.S.C. § 1983 provides as follows:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the

jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

65. Lamar and TLC have a Constitutional right to not have their property taken for public use without just compensation. The City, acting under color of state law, has deprived Lamar and TLC of their property without just compensation in violation of 42 U.S.C. § 1983 by enacting Sections 15.28.050(R), 15.28.160(P), 15.28.160(D), 15.28.250(B)(6) and 15.28.250(F) of the Code.

66. Lamar and TLC have been damaged and will be damaged thereby in an amount in excess of Seventy Five Thousand Dollars (\$75,000.00), the precise amount to be determined at trial, as well as interest, costs, disbursements, and attorneys' fees.

COUNT III

DECLARATORY JUDGMENT VIOLATION OF ARTICLE VI § 13 OF THE SOUTH DAKOTA CONSTITUTION

67. Lamar and TLC incorporate the preceding paragraphs by reference as though set forth in full.

68. This cause of action is brought pursuant to SDCL § 21-24-1, et seq., for a judicial declaration by this Court.

69. Article VI § 13 of the South Dakota Constitution provides that “[p]rivate property shall not be taken for public use, or damaged, without just compensation...”

70. Lamar removed lawfully erected signs in exchange for sign credits under the previous sign credit ordinance with the expectation that Lamar would be able to use

those credits in the future to convert existing signs to digital signs and to construct new signs and with the expectation that those credits would be in existence for longer than twenty years. As such, Lamar's off-premises sign credits reflect valuable interests in property.

71. TLC has an ownership interest in several parcels of real property which Lamar leases for its outdoor advertising signs.

72. Sections 15.28.050(R) and 15.28.160(P) of the Code's ban on all off-premises signs with internal illumination or which display electronic variable messages makes it impossible for Lamar to use any of its off-premises sign credits to convert existing signs to digital signs and to construct new digital signs. Sections 15.28.050(R) and 15.28.160(P) of the Code constitute an impermissible regulatory taking in violation of Article VI § 13 of the South Dakota Constitution.

73. The increased distance between off-premises signs imposed by Section 15.28.160(D) of the Code makes it impossible for Lamar to use any of its off-premises sign credits to construct any new sign in the City. Section 15.28.160(D) of the Code constitutes an impermissible regulatory taking in violation of Article VI § 13 of the South Dakota Constitution.

74. The inability of TLC to use the real property in which it has an ownership interest for signs with internal illumination or which display electronic variable messages decreases the value of TLC's real property interest. Sections 15.28.050(R) and

15.28.160(P) of the Code constitute an impermissible regulatory taking in violation of Article VI § 13 of the South Dakota Constitution.

75. Section 15.28.250(B)(6) of the Code may be retroactively applied to Lamar's existing credits which were obtained in reliance on the City's sign credit ordinance, decreasing Lamar's credits from the existing ninety-four (94) credits to twenty (20) credits. Section 15.28.250(B)(6) of the Code constitutes an impermissible regulatory taking in violation of Article VI § 13 of the South Dakota Constitution.

76. The value of Lamar's sign credits are materially diminished by 15.28.250(F) of the Code because Lamar's property rights are completely extinguished at the end of the twenty-year amortization period. Section 15.28.250(F) of the Code constitutes an impermissible regulatory taking in violation of Article VI § 13 of the South Dakota Constitution.

77. Lamar and TLC seek a declaratory judgment that Sections 15.28.050(R), 15.28.160(P), 15.28.160(D), 15.28.250(B)(6) and 15.28.250(F) of the Code are illegal and constitute an impermissible regulatory taking in violation of Article VI § 13 of the South Dakota Constitution.

78. Lamar and TLC seek an order and judgment of this Court mandating that Sections 15.28.050(R), 15.28.160(P), 15.28.160(D), 15.28.250(B)(6) and 15.28.250(F) of the Code are in violation Article VI § 5 of the South Dakota Constitution and ordering the City to cease and desist from any and all enforcement of Sections 15.28.050(R), 15.28.160(P), 15.28.160(D), 15.28.250(B)(6) and 15.28.250(F) of the Code.

79. In the alternative, if the application of Sections 15.28.050(R), 15.28.160(P), 15.28.160(D), 15.28.250(B)(6) and 15.28.250(F) of the Code are held to constitute a valid exercise of police power, the City must compensate Lamar and TLC for the loss that will be suffered by Lamar and TLC for the regulatory taking in an amount in excess of Seventy Five Thousand Dollars (\$75,000.00), the precise amount to be determined at trial, as well as interest, costs, disbursements, and attorneys' fees.

COUNT IV

DECLARATORY JUDGMENT VIOLATION OF SDCL § 31-29-75

80. Lamar and TLC incorporate the preceding paragraphs by reference as though set forth in full.

81. This cause of action is brought pursuant to SDCL § 21-24-1, et seq., for a judicial declaration by this Court.

82. SDCL § 31-29-75 specifically provides that no outdoor advertising sign may be removed by an amortization schedule.

83. Under South Dakota law, local ordinances cannot contradict State law.

84. Section 15.28.250(F) of the Code eliminates sign credits at the end of a twenty-year amortization period and, as such, regulates the removal of outdoor advertising signs by an amortization schedule in violation of SDCL § 31-29-75.

85. Lamar seeks a declaratory judgment that Section 15.28.250(F) of the Code is illegal and in direct violation of SDCL § 31-29-75 which provides that no outdoor advertising sign may be removed by an amortization schedule.

86. Lamar seeks an order and judgment of this Court mandating that Section 15.28.250(F) of the Code is in violation of state law and ordering the City to cease and desist from any and all enforcement of Section 15.28.250(F) of the Code.

COUNT V

DECLARATORY JUDGMENT VIOLATION OF 23 U.S.C. § 131

87. Lamar and TLC incorporate the preceding paragraphs by reference as though set forth in full.

88. This cause of action is brought pursuant to SDCL § 21-24-1, et seq., for a judicial declaration by this Court.

89. 23 U.S.C. § 131, the Highway Beautification Act, regulates outdoor advertising signs adjacent to the Interstate and Primary Highway Systems that are located within six hundred and fifty feet of the nearest edge of the right of way.

90. 23 U.S.C. § 131(g) mandates that just compensation shall be paid upon the removal of any outdoor advertising device lawfully erected under state law and protected by 23 U.S.C. § 131.

91. Lamar obtained credits for the removal of lawfully erected signs which Lamar has been prohibited from using and which will be eliminated at the end of a twenty-year amortization period.

92. Sections 15.28.050(R), 15.28.160(P), 15.28.160(D), 15.28.250(B)(6) and 15.28.250(F) of the Code are in direct contravention of federal law by causing the

removal of lawfully erected outdoor advertising signs without paying just compensation to Lamar.

93. The City is prohibited from taking sign credits provided as compensation to Lamar under 23 U.S.C. § 131(g) and Lamar seeks an order from this Court requiring the City to cease and desist from enforcing Sections 15.28.050(R), 15.28.160(P), 15.28.160(D), 15.28.250(B)(6) and 15.28.250(F) of the Code.

COUNT VI

DECLARATORY JUDGMENT VIOLATION OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION

94. Lamar and TLC incorporate the preceding paragraphs by reference as though set forth in full.

95. This cause of action is brought pursuant to SDCL § 21-24-1, et seq., for a judicial declaration by this Court.

96. The Fourteenth Amendment to the United States Constitution provides that “no state shall...deny to any person within its jurisdiction the equal protection of the laws.”

97. Sections 15.28.050(R), 15.28.160(P) and 15.28.160(D) of the Code ban all off-premises signs with internal illumination or which display electronic variable messages and increase the required distance between off-premises signs to effectively ban all types of new outdoor off-premises advertising while not applying these regulations to on-premises signs.

98. Sections 15.28.050(R), 15.28.160(P) and 15.28.160(D) of the Code deprive owners of off-premises signs equal protection under the law in violation of the Fourteenth Amendment to the United States Constitution.

99. Lamar seeks a declaratory judgment that Sections 15.28.050(R), 15.28.160(P) and 15.28.160(D) of the Code are illegal and in violation of the Fourteenth Amendment to the United States Constitution.

100. Lamar seeks an order and judgment of this Court mandating that Sections 15.28.050(R), 15.28.160(P) and 15.28.160(D) of the Code are in violation of the Fourteenth Amendment to the United States Constitution and ordering the City to cease and desist from any and all enforcement of Sections 15.28.050(R), 15.28.160(P) and 15.28.160(D) of the Code.

COUNT VII

DECLARATORY JUDGMENT VIOLATION OF THE FIRST AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION

101. Lamar and TLC incorporate the preceding paragraphs by reference as though set forth in full.

102. This cause of action is brought pursuant to SDCL § 21-24-1, et seq., for a judicial declaration by this Court.

103. The First Amendment to the United States Constitution provides that “Congress shall make no law ... abridging the freedom of speech...” The First

Amendment applies to the states through the Fourteenth Amendment to the United States Constitution.

104. Sections 15.28.050(R), 15.28.160(P) and 15.28.160(D) of the Code deprive Lamar of its right to free speech by banning all off-premises signs with internal illumination or which display electronic variable messages and increasing the required distance between off-premises signs, effectively banning all types of new outdoor off-premises advertising.

105. Sections 15.28.050(R), 15.28.160(P) and 15.28.160(D) of the Code are not narrowly tailored and leave no alternative channels for this type of advertising in violation of the First and Fourteenth Amendments to the United States Constitution.

106. Lamar seeks a declaratory judgment that Sections 15.28.050(R), 15.28.160(P) and 15.28.160(D) of the Code are illegal and in violation of the First and Fourteenth Amendments to the United States Constitution.

107. Lamar seeks an order and judgment of this Court mandating that Sections 15.28.050(R), 15.28.160(P) and 15.28.160(D) of the Code are in violation of the First and Fourteenth Amendments to the United States Constitution and ordering the City to cease and desist from any and all enforcement of Sections 15.28.050(R), 15.28.160(P) and 15.28.160(D) of the Code.

COUNT VIII

VIOLATION OF 42 U.S.C. § 1983

108. Lamar and TLC incorporate the preceding paragraphs by reference as though set forth in full.

109. 42 U.S.C. § 1983 provides as follows:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

110. Lamar has a Constitutional right to freedom of speech. The City, acting under color of state law, has deprived Lamar of its right to free speech in violation of 42 U.S.C. § 1983 by banning all off-premises signs with internal illumination or which display electronic variable messages and increasing the required distance between off-premises signs to effectively ban all types of new outdoor off-premises advertising.

111. In addition, Lamar has a Constitutional right to equal protection under the law. The City, acting under color of state law, has deprived Lamar of its right to equal protection of the law in violation of 42 U.S.C. § 1983 by banning all off-premises signs with internal illumination or which display electronic variable messages and increasing the required distance between off-premises signs to effectively ban all types of new outdoor off-premises advertising while not applying these regulations to on-premises signs.

112. By knowingly enacting and applying ordinance provisions denying rights guaranteed to Lamar by the Constitution and laws of the United States, and pursuant to the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983, the City has caused Lamar damages in an amount in excess of Seventy Five Thousand Dollars (\$75,000.00), the precise amount to be determined at trial, as well as interest, costs, disbursements, and attorneys' fees.

COUNT IX

DECLARATORY JUDGMENT VIOLATION OF ARTICLE VI § 18 OF THE SOUTH DAKOTA CONSTITUTION

113. Lamar and TLC incorporate the preceding paragraphs by reference as though set forth in full.

114. This cause of action is brought pursuant to SDCL § 21-24-1, et seq., for a judicial declaration by this Court.

115. Article VI § 18 of the South Dakota Constitution provides that “[n]o law shall be passed granting to any citizen, class of citizens or corporation, privileges or immunities which upon the same terms shall not equally belong to all citizens or corporations.”

116. Sections 15.28.050(R), 15.28.160(P) and 15.28.160(D) of the Code ban all off-premises signs with internal illumination or which display electronic variable messages and increase the required distance between off-premises signs to effectively ban all types of new outdoor off-premises advertising while not applying these regulations to on-premises signs.

117. Sections 15.28.050(R), 15.28.160(P) and 15.28.160(D) of the Code deprive owners of off-premises signs equal protection under the law in violation of Article VI § 18 of the South Dakota Constitution.

118. Lamar seeks a declaratory judgment that Sections 15.28.050(R), 15.28.160(P) and 15.28.160(D) of the Code are illegal and in violation of Article VI § 18 of the South Dakota Constitution.

119. Lamar seeks an order and judgment of this Court mandating that Sections 15.28.050(R), 15.28.160(P) and 15.28.160(D) of the Code are in violation of Article VI § 18 of the South Dakota Constitution and ordering the City to cease and desist from any and all enforcement of Sections 15.28.050(R), 15.28.160(P) and 15.28.160(D) of the Code.

COUNT X

DECLARATORY JUDGMENT VIOLATION OF ARTICLE VI § 5 OF THE SOUTH DAKOTA CONSTITUTION

120. Lamar and TLC incorporate the preceding paragraphs by reference as though set forth in full.

121. This cause of action is brought pursuant to SDCL § 21-24-1, et seq., for a judicial declaration by this Court.

122. Article VI § 5 of the South Dakota Constitution provides a right to free speech.

123. The City, acting under color of state law, has deprived Lamar of its right to free speech by banning all off-premises signs with internal illumination or which display

electronic variable messages and increasing the distance between off-premises signs effectively banning all types of new outdoor off-premises advertising.

124. Sections 15.28.050(R), 15.28.160(P) and 15.28.160(D) of the Code are not narrowly tailored and leave no alternative channels for this type of advertising in violation of Article VI § 5 of the South Dakota Constitution.

125. Lamar seeks a declaratory judgment that Sections 15.28.050(R), 15.28.160(P) and 15.28.160(D) are illegal and in direct violation of Article VI § 5 of the South Dakota Constitution.

126. Lamar seeks an order and judgment of this Court mandating that Sections 15.28.050(R), 15.28.160(P) and 15.28.160(D) of the Code are in violation Article VI § 5 of the South Dakota Constitution and ordering the City to cease and desist from any and all enforcement of Sections 15.28.050(R), 15.28.160(P) and 15.28.160(D) of the Code.

COUNT XI

DECLARATORY JUDGMENT VIOLATION OF SDCL § 31-29-69

127. Lamar and TLC incorporate the preceding paragraphs by reference as though set forth in full.

128. This cause of action is brought pursuant to SDCL § 21-24-1, et seq., for a judicial declaration by this Court.

129. SDCL § 31-29-69 specifically prohibits a municipality from banning outdoor advertising within its incorporated limits.

130. Under South Dakota law, local ordinances cannot contradict State law.

131. Sections 15.28.050(R) and 15.28.160(P) of the Code ban all off-premises signs with internal illumination or which display electronic variable messages which prohibits outdoor advertising in the City and is not reasonable or reasonably related to the needs of the business community to adequately and properly advertise its goods and services of benefit to the traveling public in violation of SDCL § 31-29-69.

132. The tripling of the required distance between off-premises signs from 500 to 1,500 feet (measured radial) and the doubling of the distance as measured over a public road from 1,000 to 2,000 feet (measured linear) in Section 15.28.160(D) of the Code effectively bans on all types of new outdoor off-premises advertising and is not reasonable or reasonably related to the needs of the business community to adequately and properly advertise its goods and services of benefit to the traveling public in violation of SDCL § 31-29-69.

133. Lamar seeks a declaratory judgment that Sections 15.28.050(R), 15.28.160(P) and 15.28.160(D) of the Code are illegal and in direct violation of SDCL § 31-29-69 prohibiting a municipality from banning outdoor advertising within its incorporated limits.

134. Lamar seeks an order and judgment of this Court mandating that Sections 15.28.050(R), 15.28.160(P) and 15.28.160(D) of the Code are in violation of SDCL § 31-29-69 and ordering the City to cease and desist from any and all enforcement of Sections 15.28.050(R), 15.28.160(P) and 15.28.160(D) of the Code.

WHEREFORE, plaintiff Lamar Advertising of South Dakota, Inc. requests judgment against defendant City of Rapid City as follows:

1. Declaring and adjudging that Rapid City Municipal Code Sections 15.28.050(R), 15.28.160(P), 15.28.160(D), 15.28.250(B)(6) and 15.28.250(F) violate Lamar Advertising of South Dakota, Inc. and TLC Properties, Inc., d/b/a Lamar TLC Properties, Inc.'s, rights under the Fifth and Fourteenth Amendments to the United States Constitution and ordering Rapid City to cease and desist from any and all enforcement of Sections 15.28.050(R), 15.28.160(P), 15.28.160(D), 15.28.250(B)(6) and 15.28.250(F) of the Code;
2. In the alternative, if the application of Sections 15.28.050(R), 15.28.160(P), 15.28.160(D), 15.28.250(B)(6) and 15.28.250(F) of the Code are held to constitute a valid exercise of police power under the Fifth and Fourteenth Amendments to the United States Constitution, awarding Lamar Advertising of South Dakota, Inc. and TLC Properties, Inc., d/b/a Lamar TLC Properties, Inc., damages for the loss suffered for the regulatory taking in an amount in excess of Seventy Five Thousand Dollars (\$75,000.00), the precise amount to be determined at trial, as well as interest, costs, disbursements, and attorneys' fees;
3. Awarding Lamar Advertising of South Dakota, Inc. and TLC Properties, Inc., d/b/a Lamar TLC Properties, Inc., damages in an amount in excess of Seventy Five Thousand Dollars (\$75,000.00), the precise amount to be determined at trial, as well as interest, costs, disbursements, and attorneys' fees, suffered as a consequence of the Rapid City's violation of Lamar Advertising of South Dakota, Inc. and TLC Properties, Inc., d/b/a Lamar TLC Properties, Inc.'s, rights under the Fifth and Fourteenth Amendment to the United States Constitution and violation of 42 U.S.C. § 1983;
4. Declaring and adjudging that Rapid City Municipal Code Sections 15.28.050(R), 15.28.160(P), 15.28.160(D), 15.28.250(B)(6) and 15.28.250(F) violate Lamar Advertising of South Dakota, Inc. and TLC Properties, Inc., d/b/a Lamar TLC Properties, Inc.'s, rights under Article VI § 13 of the South Dakota Constitution and ordering Rapid City to cease and desist from any and all enforcement of Sections 15.28.050(R), 15.28.160(P), 15.28.160(D), 15.28.250(B)(6) and 15.28.250(F) of the Code;
5. In the alternative, if the application of Sections 15.28.050(R), 15.28.160(P), 15.28.160(D), 15.28.250(B)(6) and 15.28.250(F) of the Code are held to constitute a valid exercise of police power under Article VI § 13 of the

South Dakota Constitution, awarding Lamar Advertising of South Dakota, Inc. and TLC Properties, Inc., d/b/a Lamar TLC Properties, Inc., damages for the loss suffered for the regulatory taking in an amount in excess of Seventy Five Thousand Dollars (\$75,000.00), the precise amount to be determined at trial, as well as interest, costs, disbursements, and attorneys' fees;

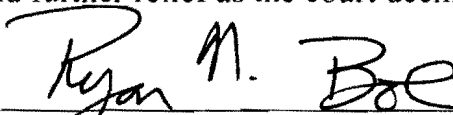
6. Declaring and adjudging that Rapid City Municipal Code Section 15.28.250(F) violates SDCL § 31-29-75 and ordering Rapid City to cease and desist from any and all enforcement of Section 15.28.250(F) of the Code;
7. Declaring and adjudging that Rapid City Municipal Code Sections 15.28.050(R), 15.28.160(P), 15.28.160(D), 15.28.250(B)(6) and 15.28.250(F) violate 23 U.S.C. § 131 and ordering Rapid City to cease and desist from any and all enforcement of Sections 15.28.050(R), 15.28.160(P), 15.28.160(D), 15.28.250(B)(6) and 15.28.250(F) of the Code;
8. Declaring and adjudging that Rapid City Municipal Code Sections 15.28.050(R), 15.28.160(P) and 15.28.160(D) violate Lamar Advertising of South Dakota, Inc.'s right to equal protection under the Fourteenth Amendment to the United States Constitution and ordering Rapid City to cease and desist from any and all enforcement of Sections 15.28.050(R), 15.28.160(P) and 15.28.160(D) of the Code;
9. Declaring and adjudging that Rapid City Municipal Code Sections 15.28.050(R), 15.28.160(P) and 15.28.160(D) violate Lamar Advertising of South Dakota, Inc.'s right to free speech under the First and Fourteenth Amendment to the United States Constitution and ordering Rapid City to cease and desist from any and all enforcement of Sections 15.28.050(R), 15.28.160(P) and 15.28.160(D) of the Code;
10. Awarding Lamar Advertising of South Dakota, Inc. damages in an amount in excess of Seventy Five Thousand Dollars (\$75,000.00), the precise amount to be determined at trial, as well as interest, costs, disbursements, and attorneys' fees, suffered as a consequence of Rapid City's violation of Lamar Advertising of South Dakota, Inc.'s rights under the First and Fourteenth Amendment to the United States Constitution and violation of 42 U.S.C. § 1983;
11. Declaring and adjudging that Rapid City Municipal Code Sections 15.28.050(R), 15.28.160(P) and 15.28.160(D) violate Lamar Advertising of South Dakota, Inc.'s right to equal protection under Article VI § 18 of the

South Dakota Constitution and ordering Rapid City to cease and desist from any and all enforcement of Sections 15.28.050(R), 15.28.160(P) and 15.28.160(D) of the Code;

12. Declaring and adjudging that Rapid City Municipal Code Sections 15.28.050(R), 15.28.160(P) and 15.28.160(D) violate Lamar Advertising of South Dakota, Inc.'s right to free speech under Article VI § 5 of the South Dakota Constitution and ordering Rapid City to cease and desist from any and all enforcement of Sections 15.28.050(R), 15.28.160(P) and 15.28.160(D) of the Code;
13. Declaring and adjudging that Rapid City Municipal Code Sections 15.28.050(R), 15.28.160(P) and 15.28.160(D) violate SDCL § 31-29-69 and ordering the City to cease and desist from any and all enforcement of Sections 15.28.050(R), 15.28.160(P) and 15.28.160(D) of the Code; and
14. Granting such other and further relief as the court deems just and equitable.

Dated:

8-26-11



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